IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 7TH AUGUST 2006 / 16TH SRAVANA 1928

ST.Rev..No. 321 of 2003()

TA.7/2003 of COMMR.KERALA AGR.IT & STAT,TVM.
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PETITIONER:

THE TRAVANCORE RUBBER & TEA CO. LTD.,
PATTOM PALACE P.O., TRIVANDRUM-695 004.

BY ADV. SRI.JOSEPH MARKOSE
SRI.MITHUN MARKOS

RESPONDENTS:

STATE OF KERALA, REPRESENTED
BY THE SECRETARY (TAXES), TRIVANDRUM.

BY SPL. G.P. SRI.V.V.ASOKAN

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 07/08/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR & K.M.JOSEPH, JJ.

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S.T.R.V. No.321 of 2003

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Dated this the 7th day of August, 2006.

JUDGMENT

Ramachandran Nair, J.

Heard counsel for the petitioner and the Special Government Pleader for the respondent. The first issue raised is whether petitioner, a plantation company which sold rubber trees is liable to pay sales tax on the sales turnover. According to the petitioner, rubber is not timber and therefore, not liable to be assessed for sales tax. This issue is covered against the petitioner by decision of this court in 9 KTR 68 and hence this question is answered against the petitioner.

2. The next question raised is whether the entire sales turnover of rubber trees is assessable for this year namely, 1996-97. The petitioner's case is that under agreement for sale petitioner allowed the purchaser to deposit sale price and to cut and remove so much of the tress for which payment is made. Sales is spread over in two years and whatever amount received during this year i.e. 1996-97 is accounted towards turnover by the petitioner and the balance is returned for the next year is the case of the petitioner. The balance received in 1997-98 is accounted in that year as sales turnover. Counsel pointed out that the officer has assessed the very same turnover this year based on agreement and next year based on receipt. If this has happened, then it amounts to double assessment which is not permissible. The question is whether the agreement is one for sale and if it is an

agreement for sale, then even if payment is deferred, the entire sales turnover has to be assessed in this year. However, in that event, the very same turnover should not be assessed in the next year based on receipt. If assessment is made next year for the very same turnover on the basis of the accounting practice followed by the petitioner, then we direct the officer to rectify such assessment and avoid double assessment of the same turnover. This issue is decided against the petitioner with direction to the officer to rectify subsequent assessment assessment avoiding double taxation of the same turnover.

3. The next issue raised is with regard to concessional rate of tax at 10% claimed on sale of timber to registered dealers who are liable to pay tax on the last sale as provided under Vth Schedule to the KGST Act. If the sales are to unregistered dealers, petitioner is liable to pay full rate of tax as provided under the Vth Schedule. However, if petitioner produces Form 25A from the purchasers towards proof of their registration and the accounting of their transaction, then petitioner is entitled to concessional rate at 10% and it is for the officer to ensure that tax is paid at the last point of sale by the purchasers.

4. The next issue raised is whether petitioner is liable to pay sales tax on pureria seeds which though not generally cultivated as a crop, is planted by rubber planters in rubber plantation as cover crop. If petitioner has raised the crop and it is sold, it is an agricultural produce liable to be assessed under the Agricultural Income Tax Act. Necessarily this follows that petitioner is not liable to pay sales

tax as it is an agricultural produce on which sales tax is not payable under the Act. The Officer is directed to verify the AIT assessment and if income from pureria seeds is returned by the petitioner and tax is paid, then the officer will exclude the said turnover from sales tax assessment.

5. The last issue raised is with regard to petitioner's liability for interest under Section 23(3) of the KGST Act. While the Department's case is that petitioner ought to have paid tax along with returns as tax is payable thereon, the case of the petitioner is that tax is paid on taxable turnover returned and the balance turnover assessed is disputed. It is pointed out that the dispute with regard to liability for sales tax on rubber trees is still pending in the Supreme Court. The Special Government Pleader submitted that even though issue is pending in appeal before the Supreme Court, so far this court is concerned the matter is covered vide decision abovereferred as early as in 2000 and the petitioner was bound to file revised return and pay tax. In any case none of the authorities including the Tribunal have dealt with the petitioner's liability for interest in a detailed manner with reference to decisions on the subject. The officer has just computed liability towards interest from the date on which final return is due till date of assessment. There are several decisions of this court, many of which are pronounced subsequent to the assessment which we feel should be considered by the Assessing Officer in fresh adjudication proceedings on interest. The officer is therefore directed to reconsider petitioner's liability for interest with reference to decisions

of this court and the Supreme Court on the subject and with specific reference to the statutory provisions. If interest is payable, he will issue detailed proposal for the same, give an opportunity to file written reply and a speaking order of adjudication should be issued. If petitioner has grievance, petitioner can challenge the same.

The Sales Tax Revision Case is disposed of as above.

C.N.RAMACHANDRAN NAIR
Judge

K.M.JOSEPH
Judge

pms

C.N.RAMACHANDRAN NAIR &
K.M.JOSEH, JJ.

S.T.R.V. No.321 of 2003

JUDGMENT

Dated 7.8.2006